



Amicus

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Business Court Committee meets with stakeholders

The Supreme Court's Business Court Committee met Friday, September, 30, with an invited group of attorneys and others representing thousands of businesses across West Virginia. Supreme Court Justices Robin Jean Davis and Menis Ketchum also attended the day-long session at the Charleston Marriott Town Center Hotel.

The group went through the second draft of proposed written rules for a Commercial Litigation Court, and the attorneys and business representatives suggested numerous changes. Those suggestions will be incorporated into a third draft, which will be presented to the Supreme Court Clerk's Office later this fall.

Clerk Rory Perry will prepare the rules for presentation to the Court in a regularly scheduled conference. At that point the Supreme Court may approve a public comment period. Public comments then will be incorporated into a final draft of the rules, which also must go before the Court for approval before a Business Court can be established in West Virginia.

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Justice Davis promotes judicial truancy programs

Supreme Court Justice Robin Jean Davis is appearing this fall at fourteen meetings around West Virginia to discuss ways the court system can work with educators, the Department of Health and Human Resources, and other community officials to keep children in school. The Supreme Court has designated Justice Davis to lead this unprecedented new effort to coordinate judicial truancy programs in West Virginia.

“Our state jails and prisons are overflowing. We can’t afford to wait another minute to address this problem, or to allow another young life to be wasted,” Justice Davis says.

Regional meetings have been held in Charleston, Clarksburg, Morgantown, and in Lewisburg.

Justice Davis is being accompanied at the meetings by Nineteenth Judicial Circuit Judge Alan Moats, who was inspired to start an anti-truancy program in his circuit (Barbour and Taylor Counties) when he realized he was seeing the same people in adult criminal court that he had once seen as truants. Nationally, statistics show that many students who are habitual truants end up dropping out of school, and eighty percent of dropouts end up in prison at some point in their lives. About seventy-five percent of prison inmates are dropouts, and more than eighty percent are functionally illiterate.

“This problem affects every single aspect of life. It’s everybody’s problem,” Judge Moats says.

Justice Davis and Judge Moats emphasize in the regional meetings that truancy must be addressed in elementary school, before bad habits are established. Truancy of young children can be handled as abuse and neglect cases through the Department of Health and Human Resources.

Justice Davis told *The State Journal* that it is important for the Supreme Court to be involved in the truancy effort. “I think our society demands it. We can’t just sit up here like five potted plants or ostriches with our heads in the ground and hand down opinion after opinion and not actively participate in our civic duties.”

The goal of the regional meetings is to demonstrate the seriousness of truancy and its potential



Justice Davis addresses a crowd in Lewisburg about truancy while Eleventh Judicial Circuit Judge James Rowe looks on. Photo by Michael Switzer

consequences. Justice Davis and Judge Moats also encourage the creation of community programs to reduce truancy that include judicial involvement. Because West Virginia is so diverse, a truancy reduction program that works in one area may not work in another, so Justice Davis and Judge Moats ask those attending each meeting to work together to establish a local program that takes advantage of that community’s assets and addresses that community’s unique problems.

Besides Judge Moats, several other circuit judges already have begun truancy programs. Currently, Greenbrier County, Logan County, Nicholas

County, Putnam County, Mercer County, and Wayne County each have a truancy program.

ACCESS TO JUSTICE PANEL CONCLUDING STATEWIDE FORUMS



Justices Brent Benjamin, left, and Menis Ketchum, right, speak during the Access to Justice public forum in Huntington on September 12. Photo by Michael Switzer

The Access to Justice Commission has been gathering citizen input on how West Virginians can navigate the state's court system at regional public forums.

The sixteen-member commission was created in 2009 to identify barriers to the judiciary, whether they be finding and affording legal representation, resources to seek remedies through the courts, physical access to the courthouse, language and communication barriers or special needs for the handicapped.

So far, the commission has heard from citizens at forums in Beckley, Martinsburg, Huntington, and Wheeling.

Ohio County Circuit Court Clerk Brenda Miller echoed that perspective at the Wheeling forum. "To go in front of a judge," she told WTOV-TV, is "a very scary task for most people."

A presentation at the Martinsburg forum revealed that West Virginia has fewer Legal Aid lawyers than there are West Virginia counties. Kelly Beck, supervisor of the Legal Aid program in the Eastern Panhandle, explained that her office helped 1,300 people last year, some from as far as 100 miles away.

Justice Benjamin told the *The [Martinsburg] Journal* that the commission is finding that "one of the big concerns relates to people being intimidated by not just the law but the procedure. People are trying to go through the system on their own and with the law being as complex as it is, it's very difficult."

In an interview with the Wheeling *Intelligencer*, Justice Benjamin said "It's not just the poor who are having problems getting access to the court. It's our neighbors and family members. People are living paycheck to paycheck, and if they need a lawyer they are in trouble. A lot of times they might not need an attorney but just someone who can point them in the right direction," said Justice Benjamin.

Clerk Miller proposed that "at the library there should be a 'come talk to an attorney day.'" Wheeling attorney Jim Bordas suggested a full-time legal advocate for magistrate court.

The director of a regional senior citizens agency proposed a legal outreach initiative in senior centers. "Many seniors are used to taking care of themselves," said Lynn Dipasquale with the Northwest Area Agency on Aging. "And when they need legal help, especially if related to a problem with a caretaker or family member, they are embarrassed to talk to anyone at the courthouse or on the phone. Seeing someone in person would be helpful," she said.

Portrait of Senior Status Judge Jolliffe unveiled in Greenbrier County

A portrait of Senior Status Judge Frank Jolliffe was unveiled September 23 at the Greenbrier County Courthouse in Lewisburg during a ceremony attended by Supreme Court Justice Robin Jean Davis, six circuit judges, two state senators, and about one hundred members of the public.

The portrait will hang in the main courtroom in which Judge Jolliffe presided for twenty-seven years before his retirement on August 31, 2006.

The painting by artist Michael Christie, an artist in residence at The Greenbrier resort in White Sulphur Springs, shows the judge looking to the side with a large American flag in the background. Judge Jolliffe joked that when the portrait is hung behind the bench, "I'll be looking right at the door for the lawyer who's late."

His portrait will hang between those of the late judges Charles M. Lobban and Nickell Kramer. Judge Lobban was an active judge for twenty years and a senior status judge for fifteen years. Judge Kramer was an active judge for twenty-seven years.



Judge Jolliffe and his family (front row, left to right): daughter Danielle; wife Marlene Pierson-Jolliffe; son Jacob; daughter Amy Jolliffe Gray. Standing in the back are his son, Christopher and son-in-law Jeff Gray. *Photo by Michael Switzer*

"We in this valley and this county are justly proud of our rich history. And we are justly proud of the rich history of our judiciary," said Judge James Rowe, who served as master of ceremonies. "Portraits are symbolic and they communicate. . . . It is fitting we have portraits of jurists who have served ably and well in this county as a reminder of what their service has been and continues to be."

Justice Davis said Judge Jolliffe became one of her mentors when she met

him at her first judicial conference. At the time, he was president of the Judicial Association and she was one of only three women judges in the state and she was the only woman at the conference.

"I sat at the back of the room and I watched; I watched Frank Jolliffe at work. When Frank Jolliffe stood up and spoke to our association, everybody listened," Justice Davis said.

Whenever she needed judicial advice, she always called him, and he always listened. "I am so grateful for that," she said.

On behalf of the Supreme Court, Justice Davis thanked Judge Jolliffe for his past and future service.

Douglas H. Arbuckle, president of the Greenbrier County Bar Association, also praised Judge Jolliffe for his willingness to help anyone in need and said it was a privilege to practice in front of him.

Judge Joseph C. Pomponio, Jr., read congratulatory letters from Senator Joe Manchin and U.S. Fourth Circuit Court of Appeals Judge Robert King. A representative from Senator Jay Rockefeller's office also spoke briefly.

Circuit Judges Robert Irons, H.L. Kirkpatrick, and Alan Moats, and Senior Status Judge Charles M. Vickers also attended.

Judge Jolliffe grew up in Morgantown and graduated from Morgantown High School, West Virginia University, and West Virginia University College of Law.

He is one of five children. His father died when he was very young and his mother worked long hours to support her family and to make sure they received an education.

He is a former member of the House of Delegates and a former Assistant U.S. Attorney for the Fourth Circuit. He became a judge in the Eleventh Judicial Circuit on July 1, 1979, when he was appointed by then-Governor Jay Rockefeller. He served as president of the West Virginia Judicial Association and was on the Education Committee.

He and his wife, Marlene Pierson-Jolliffe, are the parents of eleven-year-old Jacob and twelve-year-old Danielle, both students at Eastern Greenbrier Middle School. Judge Jolliffe served as President of the Ronceverte Little League for the 2008 and 2009 seasons and was instrumental in assisting the group with filing for nonprofit status. Judge Jolliffe is involved in the Eastern Greenbrier Middle School soccer team.

Judge Jolliffe also has two adult children. Christopher Jolliffe works at Greenbrier Technologies and Amy Jolliffe Gray teaches at Ronceverte Elementary school.



Senior Status Judge Frank Jolliffe talks to a crowd gathered for the unveiling of a portrait of him, done by artist Michael Christie, (right) that will hang in the Greenbrier County Courthouse. Photo by Michael Switzer

Robes to Schools

Judges and magistrates interested in reading to school children or talking about the justice system should contact Kandi Greter at 304-340-2755 or Kandi.greter@courtswv.gov for assistance in finding schools wanting to participate.

Drug Court News

On September 15, seven individuals graduated from Kanawha County Drug Court after successfully completing the three-phase program that typically takes a year to complete.

Rachel Haynes was one of the most recent graduates. She told Justice Brent Benjamin at the graduation ceremony that drug court saved her life. It also meant her five-month-old son, Matthew, was born drug-free.

Thirteenth Judicial Circuit Judge Jennifer Bailey presides over the Kanawha County Adult Drug Court, one of eleven in the state.



Justice Brent Benjamin stands with Rachel Haynes, a recent drug court graduate, and her 5-month-old son Matthew Haynes. *Photo provided by the Charleston Daily Mail*

Judicial officers speak to civil litigation class

Twenty-Ninth Judicial Circuit Judge Phillip M. Stowers spoke to a civil litigation class at the Kanawha Valley Community and Technical College on Tuesday, September 13.

Craig Giffin teaches the class, which is part of the college's two-year paralegal studies program. Judge Stowers focused his talk on circuit courts.

Kanawha County Magistrate Julie Yeager will visit the same class in October to talk about the work of magistrate courts.

The class visited the Supreme Court of Appeals and heard oral arguments in several cases on September 7, the first day of the Fall Term.

Other announcements

- Upcoming **Truancy meetings**: October 7 in Huntington, October 27 in Summersville, October 28 in Logan, November 1 in Martinsburg, November 2 in Keyser, November 3 in Elkins, November 4 in Beckley, November 7 in Point Pleasant, November 14 in Wheeling, and November 15 in Parkersburg.
- The West Virginia University Law School will host an **Access to Justice forum** in Morgantown on November 1. The final forum will be held on November 15 in the courtroom of the Supreme Court, in the east wing of the Capitol.
- The next Oversight Board meeting of the **Court Improvement Board** will be from 10:30 a.m. to 2:30 p.m. on Friday, October 28, 2011, at the Coalition Against Domestic Violence office in Elkview.
- November is **National Adoption Month**. If any court is planning a celebration and would like to spotlight adoptions from foster care that will be finalized in November, please contact Nikki Tennis at 304-340-2304 or Nikki.tennis@courtswv.gov. More information on National Adoption Month is available at www.childwelfare.gov/adoption/nam/.
- Valley Worlds of Fun to host **Adoption Day** celebration on Saturday, November 19, 2011, beginning at noon. For more information visit their website at www.valleyworldsoffun.com.

Winner announced of Constitution Week essay contest

On September 19, Senior Status Judge Dan O’Hanlon announced W. Austin Smith, II, was the winner of the Dan O’Hanlon-John Marshall Constitution Week Essay Competition at Marshall University. Smith received \$1,250 as the winner. He is a senior from Huntington who is a criminal justice major with a legal studies concentration.



Senior Status Judge Dan O’Hanlon poses with Justin T. Setliff (left) and W. Austin Smith, II, (right) on September 19. *Photo by The Herald Dispatch*

Justin T. Setliff was the runner-up and received \$750. Also a senior from Huntington, he is a political science major who is obtaining a minor in history.

The theme of the third annual contest was “How Shall the Constitution be Interpreted?” Smith titled his essay “Constitution Interpretation,” and Setliff titled his “The View of an Originalist.”

The essay competition was created with a \$50,000 anonymous donation. Its purpose is to encourage Marshall University undergraduates to study the historical and contemporary significance of the U.S. Constitution and the effect the Marshall Court had in establishing the importance of the Supreme Court. The contest honors Marshall and

O’Hanlon, a former professor and chairman of the Marshall University Criminal Justice Department.

Ground broken for Tucker County Courthouse annex

Tucker County officials and residents gathered on Friday, September 16, for the groundbreaking of the Tucker County Courthouse annex.

The four-story structure will have offices for the family court judge and magistrate, as well as the prosecuting attorney, county clerk, probation officers, community corrections, and Tucker County Commission. There also will be space for a courtroom, judge’s chamber, jury room, meeting space, and the circuit clerk’s office.

Supreme Court Administrative Director Steve Canterbury attended the event. He told *The [Elkins] Inter-Mountain* he was pleased with the preliminary work that went into the annex design.

“The forethought on the plan to add this annex is commendable,” Mr. Canterbury said.

The Tucker County Commission signed a contract with G.A. Brown for about \$5.7 million for the annex construction.

The purpose of Friday's meeting was to seek input from the groups that would be most affected by the rules, because they are the parties most likely to suggest problems the committee drafting the rules did not think of, and they are the most likely to suggest solutions to those problems, said Business Court Committee Chairman Darrell Pratt, a Circuit Judge in the Twenty-Fourth Judicial Circuit (Wayne County).

"We think now we can come out with a better version of proper rules," Judge Pratt said.

Marc Williams, an attorney with Nelson Mullins Riley & Scarborough in Huntington, said he appreciated the opportunity to discuss the rules with the judges as they were being written, rather than simply waiting to comment during the public comment period.

"It's almost like being in the room when legislation is being drafted. It's more substantive," Mr. Williams said. "Judge Pratt and the other judges were very receptive."

The draft rules accomplish the goal of resolving commercial litigation more quickly than the current civil litigation process, which can save businesses money, Mr. Williams said.

Brenda Harper Nichols, vice president of the West Virginia Chamber of Commerce, said the Business Court Committee "needs to be complimented for the proceedings today. To have more than one set of eyes on a work product before it is finished gives perfection to the work product.

"You had people here who had the same goal – a good draft of the final product," she said.

The draft rules envision a Commercial Litigation Court with seven judges in seven regions. The judges will be appointed by the Supreme Court Chief Justice to staggered terms of seven years, and the Chief Justice will appoint a Chief Judge to oversee administrative matters. All judges on the Court will have special training in business litigation matters. The Court will abide by West Virginia Trial Court Rules but will make an effort to conclude every case expeditiously.

The rules for West Virginia's proposed Commercial Litigation Court are largely modeled on rules for similar courts operating in Maryland and North Carolina because those states have similar types of businesses as West Virginia, Judge Pratt said.

The Supreme Court established the Business Court Committee in June 2010 in response to House Bill 4352, which the Legislature passed in March 2010.

Upcoming holidays

October 10 —Columbus Day — Offices Closed

November 11 — Veterans Day — Offices Closed

November 24-25 — Thanksgiving — Offices Closed

